Service of the within and receipt of a copy thereof is hereby admitted this.....day of December, A. D. 1959.

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IN THE

Supreme Court of the United States

October Term, 1959
No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

The petitioner was duly arraigned on April 8, 1958, in Division 30A of the Municipal Court of the Los Angeles Judicial District, upon a verified complaint filed April 2, 1958. He was charged with a violation of Section 28.06 of the Los Angeles Municipal Code. The cause was continued to April 28, 1958, for entry of plea. On that date a demurrer to the complaint was overruled by the court and the defendant granted leave to plead. He entered a plea of not guilty and the trial was set for May 27, 1958, in Division 7. On that date the cause was transferred to Division 30A where trial was had. The defendant was convicted of the charge and he appealed from the judgment and the denial of his motion for a new trial. The appeal was taken in the Appellate Department of the Superior Court in and for the County of Los Angeles, State of California. The conviction was affirmed by that court on November 17, 1958. A writ of certiorari was duly granted by this court on June 29, 1959.

The Issues.

1. Whether anonymity of expression, traditionally and currently, is a part of the scheme of free speech and includible within the purview of the First and Fourteenth Amendments to the Constitution.
2. Whether such anonymity, if so included, is subject to the exercise of the police power by a municipal legislative body.
3. If anonymity is so subject to regulation, whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000), is a reasonable exercise of police power.
4. Whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000) as applied to the petitioner under the facts of this case as duly reported in the Transcript of the Record, violates due process of law as guaranteed him by the Fourteenth Amendment.
5. Whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000), is an unreasonable classification and hence is violative of the equal protection guarantee of the Fourteenth Amendment.

Rules of Law Involved.

The free speech and free press provisions of the First Amendment to the Constitution; the due process and equal protection clauses of the Fourteenth Amendment, and Section 28.06 of the Los Angeles Municipal Code (Ord. 77,000), all of which are set forth in Appendix A hereto.

ARGUMENT.

Summary of Argument.

1. Free expression is not sufficiently broad to include the right to distribute unidentifiable handbills upon the public streets. The guarantees of free speech and press are not absolute and are subject to a reasonable exercise of the police power by a municipal legislature. If the borders of free expression are extended to include anonymity, Section 28.06 of the Los Angeles Municipal Code is a valid and reasonable regulation. The social value of anonymous expression is not of paramount consequence when contrasted to the varied social needs of a community. The effect of the ordinance so challenged is to establish a parity between a speaker and a writer. It represents neither censorship, prior restraint, nor is it a mandate controlling contents. It simply facilitates access to those persons injured or defamed to civil redress, and aids in law enforcement if the pamphlet violates the law.
2. The petitioner is a distributor and cannot champion the constitutional rights of an unknown author. Anonymity does not extend to him because his position in placing information before the public demands constant social intercourse. He cannot complain, then, of hostility to the ideas; he has accepted the exposure and assumed the risks.
3. The ordinance does not represent an unreasonable classification. The nature of a handbill is such as to create unique distinctions, foreign to other types of publications. When a circular is anonymous and unidentifiable these variances can promote certain social evils which the legislature can validly suppress.

I.

The Ordinance Under Which Petitioner Was Convicted Constitutes a Valid Exercise of the Police Power.

A. The Guarantees Accorded Free Speech Are Not So Unqualified as to Preclude Reasonable Police Power Regulation of Anonymity in Expression.

It is an established principle that the right to express oneself freely has not been so canonized as to place it beyond the reach of those charged with legislative responsibilities (*Near v. Minnesota*, 283 U. S. 697). The freedoms of the First Amendment (hence the Fourteenth Amendment, *Near v. Minnesota, supra*) "are not absolute," and the experience of these civil liberties imply the existence of an organized society maintaining public order, without which liberty itself would be lost in excesses and restrained abuses. (*American Communication Ass'n v. Douds*, 339 U. S. 382).

The Fourteenth Amendment, together with the First Amendment, does not prevent reasonable, non-discriminatory regulation that preserves peace, order and tranquility without deprivation of the First Amendment guarantees of speech (*Poulos v. New Hampshire*; 345 U. S. 395), and permits affirmatively a reasonable and valid exercise of police power to promote public convenience in the interest of all (*Cox v. New Hampshire*, 312 U. S. 569). This court "has recognized that free speech is not itself a touchstone." (*Niemotko v. Maryland*, 340 U. S. 268, Justice Frankfurter in a concurring opinion.)

The ordinance now under the scrutiny of this court is one involving the distribution of handbills. There is no question that "liberty of circulation is as essential to the freedom as liberty of publishing; without the circulation

the publication would be of little value." (*Ex parte Jackson,* 96 U. S. 727, 733; *Lovell v. Griffin,* 303 U. S. 444). However, it follows that the liberty of circulation, like its counterpart freedom to speak, is subject to the same reasonable restrictions. (*Schneider v. State,* 308 U. S. 146.) Ancillary to a consideration of the ordinance, it appears provident to examine several general principles.

A nebulous and sometime phantasmatic line (*cf. Saia v. New York,* 334 U. S. 558, and *Kovacs v. Cooper,* 336 U. S. 777), is to be perceived establishing propriety in police power exercise in regulation of expression. Some might refer to it as "la belle dame sans merci." This court itself has recognized the problem:

> "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in line, or helping to establish it, are fixed by decisions, that this or that concrete case falls on the nearer or farther side."
>
> *Carpenters & Joiners Union v. Ritter's Cafe,* 315 U. S. 722, citing: *Hudson County Water Co. v. McCarter,* 209 U. S. 349, 355.

What then are the so-called landmarks or points in line? There can be no question that *license* and *censorship* stand diametrically opposed to the Anglo-American concept of free expression. A government-issued license to publish was subjected to scorn as early as 1644 by Milton before Parliament (see Areopatica, Everyman's Library, pp. 22-36, 1927). This court has dealt with censorship in its boldest form by denominating it as an unconstitutional exercise of police power, and hence a violation of due process. The necessity of a permit from the City Manager "strikes at the very foundation of freedom of

the press". (*Lovell v. Griffin, supra.*) Nor does placing with a chief of police discretionary power to grant a permit render such exercise any more constitutional (*Schneider v. Irvington*, 308 U. S. 147). (See also: *Kunz v. New York*, 340 U. S. 290, and *Niemotko v. Maryland, supra.*) A tax upon free expression is deemed void (*Grosjean v. American Press Co.*, 297 U. S. 233). (*Cf. Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495, and *United States v. Paramount Pictures, Inc.*, 334 U. S. 131.)

Problems akin to censorship arise when the contents of an expression collide with public convenience and morality. An occlusion by a sovereignty to that which is said should not be and is not compelled by due process. On the contrary, this court has determined whether "it is a regulation of conduct . . . employed by public authority as a cloak to hide censorship of unpopular ideas . . . or . . . a legitimate attempt to protect the public not from the remote possible effects of noxious ideologies, but from the present excesses of direct, active, conduct . . . are not presumptively bad, because this interferes with and in some manifestations restrains the exercise of First Amendment rights." (*American Communication Ass'n v. Douds, supra.*) "Fighting words" that stir the listeners to threaten the public peace are not protected. (*Feiner v. New York*, 340 U. S. 315; *Chaplinsky v. New Hampshire*, 315 U. S. 568.) Obscenity in expression is not held to be within the protected class of speech (*Chaplinsky v. New Hampshire, supra; Roth v. United States*, 354 U. S. 476; *Alberts v. California*, 354 U. S. 476.) Neither is its distribution (*United States v. Alpers*, 338 U. S. 680.) Manifestly, grave problems arise when regulatory measures are placed upon the contents of expression; the decided proximity to a control of beliefs is apparent. Justice Douglas,

joined by Chief Justice Warren and Justice Black, remarked that:

> "The First Amendment embraces two concepts: freedom to believe, and freedom to act; the first is absolute, but in the nature of things, the second cannot be, conduct remaining subject to regulation for the protection of society (*Black v. Cutler Laboratories*, 351 U. S. 292.).

In respect to the "act" this court has found that free expression can be reasonably restricted as to time, place and manner. (*Kovacs v. Cooper, supra; Saia v. New York, supra; Schneider v. State, supra; Cantwell v. Connecticut*, 310 U. S. 296.) Highly pertinent to the case at bar are certain "points in line" that give a judicial interpretation to the "reasonableness" of regulation of assertive conduct coincidental to free expression; more specifically to communication by means of pamphlets or handbills.

There is an absolute right to utilize the public streets as a means of dissemination of informative handbills. It provides a forum, no less important than Rome's, for free discussion. More stringent regulations can be placed upon commercial leaflets. However, since the petitioner in this case was not engaged in a commercial venture *per se*, any limitations placed upon circulars pointed toward economic advantage are of no consequence. (*Breard v. Alexandria*, 341 U. S. 622.) (*Cf. Jamison v. Texas*, 318 U. S. 413.)

When restriction is placed upon non-commercial leaflet distribution, this court, in determining constitutionality, has looked to the interest sought to be protected by the municipality as opposed to the extent of encroachment upon the guarantees of free expression. In short, a balancing process. (*Martin v. Struthers*, 319 U. S. 141.)

It goes without saying that a blanket or absolute prohibition of non-commercial leaflet circulation is void (*Hague v. C. I. O.*, 307 U. S. 496; *Jamison v. Texas, supra*), as is a requirement of a permit (*Schneider v. Irvington, supra*). The interest of a municipality in keeping its streets uncluttered by leaflets is subservient to the right to use the streets for public communication through the media of non-commercial pamphlets (*Jamison v. Texas, supra*). That peaceful distribution, door to door, of religious pamphlets is of a greater social consequence than is the interest of eliminating undesired intrusions upon late sleepers (*Martin v. Struthers, supra*). Quasi-public land, owned privately, cannot attach restrictions which deny the constitutional right of free expression (*Marsh v. Alabama*, 325 U. S. 50. *Cf. Tucker v. Texas*, 326 U. S. 517.) However, the cases dealing with non-commercial pamphlets go no further. From them it is clear that no pertinent analogy can be drawn and no rule synthesized for determining the constitutionality of Section 28.06 of the Los Angeles Municipal Code. (See Appendix "A".)

Petitioner relies on the historical significance of anonymous writers in his contention that anonymity is established in the scheme of free expression. Much mention has been made of the eighty-five Federalists Papers that were penned under the fictitious name of "Publius" but which were in fact written by James Madison ably assisted by Alexander Hamilton and John Jay. At the time of their writings the government of this country was struggling under the Articles of Confederation and these great patriots were arduously seeking support and advocating the adoption of the Constitution. It is not to be idly observed that these same anonymous writers were leaders in the authorship and the drawing together of the great democratic principles in the formation of this

Republic. Their faith in anonymous expression was apparently of insufficient strength for them to effectuate in the Constitution a guarantee for anonymity.

It was Mr. Madison who unsuccessfully championed the belief that the guarantee of free speech and press should be made applicable to the several states. Such thought was rejected in the First Amendment in the Bill of Rights (Annals of Congress 1, 755, cited in "Constitution of the United States" (1952), United States Printing Office, Washington, D. C.) This demonstrated his profound faith in free expression. Perhaps he felt the social value of anonymity in expression was outweighed by the right of the citizens to be informed. In any event, several lines of cases bearing a kinship to the case at bar would unequivocably concur with him, if such were his contention.

In a dissenting opinion, Mr. Justice Roberts observed that no constitutional infringement of free speech resulted in requiring *identification* by persons holding themselves out with an especial knowledge or background in a state community. (*Thomas v. Collins*, 323 U. S. 516.) (The majority opinion founded its reversal upon a prior restraint: required registration as a condition precedent to making a speech. It was deemed unconstitutional on that basis.)

Two cases requiring disclosure of membership lists under a state statute have been before this court. The more recent was *NAACP v. Alabama*, 357 U. S. 449. The court expressed a deep concern for the inviolability of privacy in group association and the traditional freedoms accorded thereto. No question can be raised concerning "the substantial detriment" to those on the membership rolls in the State of Alabama. Totally unjustifiable hardships would arise, however, the immunity granted did not extend to agents or employees.

In the earlier case, *New York ex rel. Bryant v. Zimmerman,* 278 U. S. 63, the court found that disclosure of membership rosters of organizations requiring an oath as a condition of membership was a "proper exercise of the police power. It would operate as a substantial deterrent from violations of public or private right to which the association might be tempted if disclosure were not required", in that the members' names would then be a matter of public record.

Mr. Justice Harlan, speaking for the court in NAACP, tried to reconcile and distinguish both cases and hence demonstrated a decided reluctance to overrule the *Zimmerman* decision. Now, as then, such is a highly onerous task, perhaps requiring the ultimate remedy ministered to the Gordian Knot. It is submitted that if both cases are given juxtaposition, it is difficult to use either as a "point in line" for contrast or comparison to the case at bar.

Dissemination of information through the United States mails has not been accorded anonymity. Congress, under the postal power, enacted certain legislation under 37 Statutes at P. 553, Chapter 389, subsequently amended 39 U. S. Code Title 39, Chapter 6, Section 233 (1933), that provides, *inter alia* that newspapers using the second class mails, and hence claiming the substantial pecuniary benefits attached thereto, must, as a condition to such use, publish in each copy mailed a sworn statement containing the names of the editor, publisher, owner and stockholders. Failure to so comply results in positive criminal sanctions. This court has upheld a conviction under such legislation:

> "Congress, in the interest of the dissemination of current intelligence, may so legislate as to the mails."
>
> *Lewis Publishing Co. v. Morgan,* 229 U. S. 288.

The *Lewis* case, *supra*, utilized the theory of *privilege* as to the mails, to justify regulation. In one of the latest expressions by this court, *Roth v. United States, supra,* the absence of this theory was pronounced. However, the regulatory features of communication in the postal power have withstood the constitutional challenge.

Under the *Lewis* decision it appears that those who share responsibility in newspaper endeavors have no constitutional right to go unnoticed. The reader is entitled to know of their identity.

The federal government has denied persons who solicit or are recipients of money for the purpose of influencing legislation the right to remain anonymous under the Federal Lobbying Act (2 U. S. C. Sec. 307). This court held constitutional such rule in *United States v. Harris,* 347 U. S. 612. Mr. Chief Justice Warren stated in the majority opinion:

> "The Act does not violate freedom to speak, publish or petition the Government. Members of Congress are not expected to explore the myriad of pressures to which they are regularly subjected. *They should be able to evaluate them.* Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment, while masquerading as proponents of the public weal. The act . . . . has merely provided a *modicum of information.*" (Emphasis ours.)

Thus, the cloak of anonymity was pierced, and any right to remain incognito as a lobbyist was successfully banished.

In the field of publication and distribution of election materials, the identical proposition has been uniformly deemed by the courts of the several states non-violative of due process.

Under the Minnesota Corrupt Practices Act it is required that he who distributes or causes to be distributed any election publication is responsible for its bearing the name and address of the author and candidate in whose behalf such is circulated. This is coupled with the further requirement that, if any person knowingly publishes a false statement about a candidate or proposition, he shall be adjudged guilty of a misdemeanor. Convictions have been sustained under this statute: see *Olson v. Billberg*, 151 N. W. 550; *Hanley v. Wallace*, 163 N. W. 127, both cases passing upon General Statutes, "Corrupt Practices Act" Minnesota, Section 573 (1913). The precise issue of required identity went unquestioned in *Dart v. Erickson*, 248 N. W. 706, construing Mason's Minnesota Statutes (1927), Sections 539 and 544.

The State of Florida enacted legislation requiring a copy of any charges or attack against a candidate to be served upon the attackee, if the charges were made within 18 days prior to the primary election, violation of which was a misdemeanor. (Florida Comp. Gen. Laws, Section 8189 and Revised Statutes, Section 5925.) The Supreme Court of that state upheld the statute in *Ex parte Hawthorne* (1934), 156 So. 619. The Chief Justice, Mr. Davis, remarked in the opinion of the court:

> "The statute may be said to be an aid, rather than a deterrent to the enjoyment of the right of free speech, by restraining the launching of secretly prepared charges and attacks."

The court recognized the necessity of an affirmative rule of law, rather than solely negative consideration, in exploring the labyrinth of free expression.

The Supreme Court of Kansas upheld a statute "prohibiting anonymous publications that criticized candidates' personal characters or their political actions." (See *State v. Freeman* (1936), 143 Kan. 315, 55 P. 2d 362, passing on validity of Section 25-1714, Revised Statutes of Kansas (1923).) The court indicated that there is *nothing* in the Bill of Rights that denies the right to enact legislation which prohibits anonymous writings or publications. The "obvious intent" and purpose of the statute was found in clearly and definitely fixing the responsibility for this method of campaigning.

> "A voter is entitled to know who is responsible for a publication, irrespective whether it is malicious propaganda or truth." (*State v. Freeman, supra*).

In *State v. Babst* (1922), 104 Ohio St. 167, 135 N. E. 525, the highest court of Ohio upheld a similar statute passing upon section 13343-1, General Code, Part 4, Title 1, Chapter 18. It remarked that it is "merely a regulation to prevent anonymous statements that might easily result in fraudulent and corrupt motives."

Perhaps the most lucid comments concerning anonymity in expression have come from the Pennsylvania court in *Commonwealth v. Evans* (1944), 156 Pa. Super. 321, 40 A. 2d 137. In holding constitutional Section 1846, Pennsylvania Election Code, which prohibits anonymous publication of a circular or other printed matter reflecting upon the personal character or political actions of a candidate for public office, the court developed several novel but profound insights in the relation of anonymity and free expression. It observed:

> "It compels the writer, exercising his freedom of the press, to disclose his identity and assume respon-

sibility, *just as a speaker,* exercising his right to free speech, identified himself by the very fact of articulation, and ipso facto, becomes responsible for his utterance. It is an attempt to extirpate the dirty business of surreptitious character assassination. *The Bill of Rights, which guarantees the precious right of literary expression, does not contain one syllable which protects anonymous writers.*" (Emphasis ours.)

B. If Such Privilege Is Found to Exist, the Interest of Los Angeles in Enacting Section 28.06, Los Angeles Municipal Code, Was of Such Significance in the Scale of Social Values That It Substantially Outbalances Any Benefits Accruing to an Unidentifiable Pamphlet.

The interest of Los Angeles in requiring identification of one who causes pamphlet distribution is based upon socially pressing needs. Seeking the abolition of fraud, deceit, false advertising, negligent use of words, obscenity, and libel are salutary goals for a municipality. In requiring such identification, the government is given a means of ascertaining a culpable party and is facilitated in placing responsibility that may arise. Assuredly, the public is served.

If the remarks are libelous, and not within the protection of due process, the ordinance clearly aids law enforcement. (*Beauharnis v. Illinois*, 343 U. S. 250.) If civil liability is incurred, the aggrieved party can swiftly pursue his remedies and defend himself in an attempt to mitigate his damaged reputation.

Perhaps, the interest of signal importance is the grant of security given by Los Angeles to its citizens in the

discouragement of invasions of individual privacy. Sanctions against such conduct are not violative of the due process guarantees of free speech. (*Donahue v. Warner Brothers Pictures,* 194 F. 2d 6.)

The existence of a right of self-sanctity was declared and recognized in the prophetic article, "The Right to Privacy." (Harvard Law Review, Vol. IV, No. 5, pages 194-220, Warren and Brandeis.) This right, and its corresponding liability sounding in tort, is currently enjoying promulgation throughout varied jurisdictions. Significant to the case at bar, it has been recognized in California. (*Gill v. Curtis Publishing Company,* 38 Cal. 2d 273, 239 P. 2d 630.) Its development and growth germinated from:

> "The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man under the refining influence of culture has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual." (The Right to Privacy, *supra,* p. 196.)

The legislatures, like the courts, have come to realize this need. The challenge to them can be simply stated:

> "They have recognized a man's home as his castle, impregnable, often, even to the court's own officers engaged in the execution of its commands. Shall the courts (and the legislature) then close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?" (The Right to Privacy, *supra,* p. 220, parenthesis ours.)

California answers this question in the negative and extends protection to: "The right to live one's life in seclusion, without being subjected to unwarranted and unclaimed publicity, or simply the right to be left alone." (See *Gill v. Curtis Publishing Co., supra*, p. 276.)

Los Angeles responds also in the negative. Cannot it then be said that Section 28.06 has given an effective remedy to the private citizen in the form of an available means of discovery, thus expediting any civil redress that might be his?

The interest of the government in promoting the dissemination of current intelligence has been held to be a social interest worthy of encouragement by public policy (*Lewis Publishing Co. v. Morgan, supra.*) Section 28.06, Los Angeles Municipal Code, has the wholesome effect of purifying rather than stultifying the information contained therein, thus giving the recipient a better basis to judge the contents. By identifying the person interested in distributing a pamphlet, the tenor of the comments take on new meaning. For example, a leaflet circulated by Ezra Pound would have a decidedly different import than the same remarks disseminated by either Robert Hutchins or Cardinal Newman, or Sir Laurence Olivier. If the person causing such distribution was a known chronic prevaricator, or his general reputation in the community for integrity was bad, or if such person was an accepted authority on the matters contained in the leaflet, all of these factors would tend to enlighten the recipient. The name was evidentiary value and autoptic proference.

Rules of evidence developed through human experience are aimed at presenting facts in their purest form to a tribunal. The tribunal affected by Section 28.06 is the

Open Market of Ideas: one worthy of every idea and thought but deserving proper perspective. The ordinance fills precisely this need.

The ordinance herein does not represent license or censorship. Nor does it limit the contents of the pamphlet. It simply establishes a parity in placing the person causing distribution on the same plane as a speaker. It is an effort to affirmatively protect speech; a freedom "from" rather than a freedom "to." Recognizing the need of such legislation Mr. Justice Jackson, in his dissenting opinion in *Kunz v. New York*, 340 U. S. 290, quoted from Bertram Russell's "Authority and the Individual" (page 25):

> "The problem, like those with which we are concerned, is one of balance; too little liberty brings stagnation, and too much brings chaos."

C. The Ordinance as Applied to the Petitioner Does Not Offend the Due Process Clause.

A close reading of the record indicates that the petitioner was merely a distributor. There is a resounding silence and voidness of evidence showing his responsibility for the contents of the dodger. Hence, it is difficult, if not impossible, to perceive how he can strongly advocate the cause of anonymity in publication. It is submitted that the petitioner cannot be heard to complain about any possible abridgment of freedom of speech that might affect a stranger to this case; that is, the person who *sponsored the circulation of the pamphlet.* (See App. A.)

It is fundamental that:

> "One attacking the constitutionality of a statute is not the champion of any rights, except his own." (Justice Cardozo, *Henneford v. Silas Mason Co.*,

300 U. S. 577; Also see *Frank L. Young Co., v. McNeal-Edwards Co.,* 283 U. S. 398 and *Bode v. Barrett,* 344 U. S. 583.)

In the case at bar it would appear that the petitioner, as the distributor, is trying to fill the sponsor's shoes and furthermore to act as his constitutional spokesman. Assuming, however, that he is in a position to validly challenge the ordinance, his claim, again, is without merit.

The petitioner was presumably circulating the pamphlets in question in a public place. He had effectively exposed himself to any potential public reprisal, violence and all those frightful things he complains of, as his justification for attaching the due process guarantees to anonymity in expression. He is claiming anonymity from the very adversaries he is meeting face to face. Futhermore, the sponsor apparently thought that his idea was sufficiently acceptable to potential recipients to solicit their aid. He even put a telephone number and address where he could be reached.

It is submitted that if anonymity is a constitutional right, under these circumstances, the petitioner is not the party to claim it.

II.

The Ordinance Does Not Make an Unreasonable Classification and Hence, Does Not Violate the Equal Protection Clause of the Fourteenth Amendment.

It is fundamental that legislative discrimination is inoffensive to the equal protection clause when it reflects the fact, or legislative belief, that evils in the same field are of different dimensions and proportions requiring different remedies, or when the discrimination occurs as a

consequence of reformative legislation which takes one step at a time and addresses itself to the phase of the problem which seems most acute to the legislative mind.

Williamson v. Lee Optical of Oklahoma, Inc., 348 U. S. 483.

The legislature is free to recognize degrees of harm; a law which hits the evil where it is most felt will not be overthrown because there are other instances to which it might have been applied.

West Coast Hotel v. Parrish, 300 U. S. 379.

While the Constitution, in enjoining the legal protection of the laws upon states, precludes irrational discrimination as between persons or groups of persons in the incidence of a law, it does not require situations which are different in fact or opinion to be treated in law as though they were the same.

Goesart v. Cleary, 335 U. S. 464.

The deference due to the judgment of a state legislature in the matter of statutory classification alleged to deny equal protection of the laws, is especially to be observed when local conditions which the court cannot know, may affect the answer to the crucial question of whether the court can say, on its judicial knowledge that the legislature could not have had any reasonable ground for believing there were such public considerations as to justify the distinction made.

Dominion Hotel v. State of Arizona, 249 U. S. 265.

The limitation in Section 28.06 of the restrictions to handbills is not arbitrary and unreasonable. The dictates of experience demonstrate that books, magazines,

and more formal publications are highly susceptible to identification. Most contain the names of the various authors, editors, and publishers. Pamphlets and dodgers are, of course, substantially different. They are inexpensive to publish, and are capable of being printed by the simplest of devices. Damage can be wrought and the perpetrator's tracks covered in a mere moment of time.

Thus, the legislative discrimination is reasonable when compared to the interests sought to be protected.

Conclusion.

The judgment should be affirmed.

Respectfully submitted,

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APPENDIX "A".

Constitutional Provisions and Ordinances Involved.

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The provisions of Section 28.06 of the Municipal Code of the City of Los Angeles are:

> "28.06—Hand-Bill. Name and Address of Manufacturer-Distributor:
>
> "No person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover, or the face thereof, the name and address of the following:
>
> (a) The person who printed, wrote, compiled or manufactured the same.
>
> (b) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon."